

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODYU.S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

JAN 25 2017

United States District Court	District	Eastern District of Missouri
Name (under which you were convicted):	Docket or Case No.:	
Brian Hounsom	4:14cr - 00246 agf-nab	
Place of Confinement:	Prisoner No.:	41870 - 044
LEAVENWORTH PRISON CAMP	Movant (include name under which convicted)	
UNITED STATES OF AMERICA	v.	
Brian Hounsom		

RECEIVED

JAN 25 2017

MOTION

BY MAIL

(a) Name and location of court which entered the judgment of conviction you are challenging:

United State District Court Eastern District of Missouri Eastern Division
St. Louis Missouri

(b) Criminal docket or case number (if you know): 4:14cr - 00246 agf - nab

2. (a) Date of the judgment of conviction (if you know): September 1st 2015(b) Date of sentencing: December 22nd 2015

3. Length of sentence: 78 months

4. Nature of crime (all counts):

1. Conspiracy to distribute and posses with intent to distribute
one thousand kilograms of marijuana

2. Conspiracy to launder the proceeds of drug trafficking

5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest) (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or
what did you plead guilty to and what did you plead not guilty to?6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Defendant's counsel was ineffective and deficient in that he failed to argue against the Leader/Organizer Role enhancement

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel for Defendant did not address the Leader/Organizer Role enhancement at sentencing. No evidence was produced in any court proceeding which indicated Defendant to be in a leadership role. Evidence shows that Defendant played a lesser role in the conspiracy which involved several individuals, including those who did play integral roles in the leadership. Defendant's counsel's failure to argue this key enhancement resulting in prejudice against Defendant in that he received an additional two (2) point enhancement.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this

issue: I did not realize until after my time for appeal had expired that my counsel failed to argue this point. I depended upon my counsel to investigate and argue all areas which were available to me. I only recently discovered caselaw that supports my position that "(m)ere culpability is not sufficient to render one a leader, organizer, manger or supervisor." (US v Avila, 95 F3d 887 (9th Cir 1996)).

GROUND TWO: Defendant's counsel was ineffective

and deficient in that he failed to give me a full understanding of

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
the proffering process.

During the meeting in which a proffer had been extended to me, my counsel did not fully explain my rights as it pertained to Rule 11 and the divulging of information to authorities. I had no information which I felt to be pertinent to the questions asked of me, therefore the proffer was not extended to me. My counsel failed to intervene and inform me that the information I could have given was sufficient. Due to this failure by my counsel, I was prejudiced in that I was not able to take advantage of the Government's offer of fifty-seven (57) month recommendation upon my plea of guilty.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: Defendant's counsel was ineffective and deficient in that he failed to argue the amount of marijuana upon which I was sentenced

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant's counsel did not argue the point that this Court sentenced Defendant based upon an amount of a controlled substance for which there was no evidence. Evidence produced before this Court was not sufficient for this Court to use as a basis for the base amount by which Defendant was sentenced.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: Defendant's counsel was ineffective and deficient in

that he gave Defendant advice which caused Defendant to not take

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
advantage of the fifty-seven (57) month plea offer.

Defendant was extended an offer of fffty-seven (57) months by the
Government. Defendant was advised by his counsel to take certain
actions which caused this offer to be rescinded, thus causing
Defendant to be unable to take full advantage of the offer.

Defendant followed the advice of counsel without full understanding
of the ramifications.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

All grounds raised in this motion have only recently been discovered by Defendant. Defendant has not filed any other motions or presented these grounds because he was fully

dependent upon his counsel to properly advise him as to these
matters.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing: _____

(b) At the arraignment and plea: _____

(c) At the trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of -

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has

been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

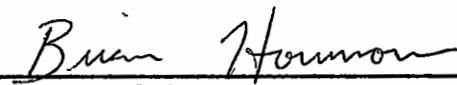
Therefore, movant asks that the Court grant the following relief: That the Court authorize a resentencing in this Case and allow Defendant to raise the objections stated herein.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system, first class postage prepaid on
December 21, 2016 (month, date, year).

Executed (signed) on December 21, 2016 (date)


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

